

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 33575

STATE OF IDAHO,	)	2008 Unpublished Opinion No. 403
	)	
Plaintiff-Respondent,	)	Filed: March 20, 2008
	)	
v.	)	Stephen W. Kenyon, Clerk
	)	
COREY SEAN FREDERICK,	)	THIS IS AN UNPUBLISHED
	)	OPINION AND SHALL NOT
Defendant-Appellant.	)	BE CITED AS AUTHORITY
	)	

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Appeal from the District Court of the Third Judicial District, State of Idaho, Canyon County. Hon. Juneal C. Kerrick, District Judge.

Judgment of conviction for possession of a controlled substance, affirmed.

Molly J. Huskey, State Appellate Public Defender; Eric D. Fredericksen, Deputy Appellate Public Defender, Boise, for appellant.

Hon. Lawrence G. Wasden, Attorney General; Jessica M. Lorello, Deputy Attorney General, Boise, for respondent.

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WALTERS, Judge Pro Tem

Corey Sean Frederick appeals from the judgment of conviction entered upon his guilty plea to possession of a controlled substance, methamphetamine. I.C. § 37-2732(c)(1). He challenges the district court's decision denying Frederick's motion to suppress evidence seized at the time of his arrest. We affirm.

I.

BACKGROUND

The following facts were found by the district court and are not in dispute. On November 9, 2005, Parma Police Officer Cullen, accompanied by a drug-detection canine, provided assistance to Wilder Police Officer Tveidt by undertaking the service of some outstanding arrest warrants. Officer Cullen had been given the description of a white Ford Ranger pickup with a utility box on the back that might be operated by one of the persons being sought for arrest, and he observed such a vehicle pull into and stop at a convenience store parking lot. Officer Cullen

drove into the lot also, parked and got out of his vehicle. The driver of the Ford pickup got out of the truck and started toward the store, leaving the door to the pickup open. Officer Cullen called out the name “Mr. Frederick” even though he did not know who the driver of the pickup was. The driver of the pickup, without closing the vehicle door turned around in response to the officer and acknowledged the called-out name by saying: “Yes.” Officer Cullen then asked the driver if he was “Corey Sean Frederick,” and the driver said that he was. Officer Cullen told Frederick that there was a warrant for his arrest and took him into custody on the warrant. Officer Cullen handcuffed Frederick and placed him in the back seat of the patrol car. The officer went to the pickup and inspected the interior of the cab to make sure that it was safe to bring his drug-detection canine to the vehicle to search it. The officer used his flashlight to see whether there was anything inside the vehicle, such as knives, sharp objects, or even food, that could potentially harm the dog which was still in the patrol vehicle. During all of this time, the driver’s side door to the white pickup was still open and had not been closed.

Officer Cullen first had the dog search around the exterior of the pickup. The dog did not alert. After completing that search, the dog went into the cab through the open driver’s door. Upon entering the pickup through the open door, the dog immediately alerted, indicating that he had detected the odor of a substance that he was trained to identify. Officer Cullen then pointed to individual objects contained in the passenger compartment of the pickup. The dog indicated on a shaving kit bag on the passenger seat under a lunch box and also on a little metallic-type pen tube that was on the floor. A further search of those items produced a substance that tested positive for methamphetamine.

The state charged Frederick with possession of a controlled substance, methamphetamine. Frederick filed a motion to suppress, alleging that the search that led to the discovery of the methamphetamine violated his rights under the Fourth Amendment and Article 1, sections 13 and 17 of the Idaho Constitution. After an evidentiary hearing, the district court denied the motion on the ground that the search of Frederick’s vehicle was valid as a search incident to arrest. Frederick entered a conditional plea of guilty, preserving his right to appeal the denial of his suppression motion.

## **II.**

### **STANDARD OF REVIEW**

The standard of review of a suppression motion is bifurcated. When a decision on a motion to suppress is challenged, we accept the trial court's findings of fact which are supported by substantial evidence, but we freely review the application of constitutional principles to the facts as found. *State v. Atkinson*, 128 Idaho 559, 561, 916 P.2d 1284, 1286 (Ct.App.1996). At a suppression hearing, the power to assess the credibility of witnesses, resolve factual conflicts, weigh evidence, and draw factual inferences is vested in the trial court. *State v. Valdez-Molina*, 127 Idaho 102, 106, 897 P.2d 993, 997 (1995); *State v. Schevers*, 132 Idaho 786, 789, 979 P.2d 659, 662 (Ct.App.1999).

### III. DISCUSSION

The district court held that the search of Frederick's pickup was conducted incident to a lawful custodial arrest and was therefore valid as a recognized exception to the requirement that a search be conducted pursuant to a warrant. In its ruling, the district court relied upon the decisions of the United States Supreme Court in *New York v. Belton*, 453 U.S. 454 (1981), and *Thornton v. United States*, 541 U.S. 615 (2004), and upon the decision of the Idaho Supreme Court in *State v. Charpentier*, 131 Idaho 649, 962 P.2d 1033 (1998). Those decisions establish that an officer may search the passenger compartment of a vehicle incident to the lawful arrest of one of its occupants or of a recent occupant who has a "temporal or spatial relationship to the car at the time of the arrest and search." *Thornton*, at 622. That relationship "does not turn on whether [the arrestee] was inside or outside the car at the moment that the officer first initiated contact with him." *Id.* The district court found that Frederick was subject to a lawful arrest pursuant to a warrant; that when he was arrested, his vehicle was not occupied by any other person; that the driver's side door of the vehicle from which he had exited was not yet closed after Frederick left it and responded to the officer's call of his name; and that the vehicle was within a few feet from the spot where Frederick was taken into custody. The district court determined that these facts satisfied the kind of "temporal" and "spatial" relationship that a "recent occupant" of a motor vehicle who is placed under lawful arrest must have under *Thornton* in order for the *Belton* rule to apply. Accordingly, the court concluded that Officer Cullen possessed the authority to search the passenger compartment of Frederick's vehicle, including the containers located within that passenger compartment.

On this appeal, Frederick argues against the *Belton* rule as clarified by *Thornton*, and contends that the decision of the Idaho Supreme Court in *Charpentier* which adopted the *Belton* decision as a bright-line rule should be overruled. We decline, however, to follow Frederick's suggestion. In *State v. Watts*, 142 Idaho 230, 127 P.3d 133 (2005), the Idaho Supreme Court was presented with the same arguments made here by Frederick to abandon the *Belton* rule and to overrule *Charpentier*, and the Court refused to do so. Frederick has not tendered any cogent reason why the *Watts* determination should be revisited. It is well established that controlling precedent will not be overruled "unless it is manifestly wrong, unless it has proven over time to be unjust or unwise, or unless overruling it is necessary to vindicate the plain obvious principles of law and remedy continued injustice." *State v. Humpherys*, 134 Idaho 657, 660, 8 P.3d 652, 655 (2000). Nor does this Court possess authority to overrule a decision of the Idaho Supreme Court.

Finally, Frederick contends that Officer Cullen's use of the drug-detection canine to search the interior of the pickup was impermissible as a search without probable cause, citing *United States v. Winningham*, 140 F.3d 1328 (10th Cir. 1998). However, *Winningham* did not involve a *Belton* search incident to a lawful arrest. Because Officer Cullen properly could have opened and inspected the contents of containers within the passenger compartment of Frederick's truck, it was not impermissible to use the drug-detection dog to assist with that search.

#### IV.

#### CONCLUSION

The district court did not err in concluding that the search of Frederick's vehicle was valid as incident to a lawful arrest. The order denying the motion to suppress is affirmed.

Judge LANSING and Judge PERRY **CONCUR**.